

Appln No.: 09/654,373
Amendment Dated: August 18, 2004
Reply to Office Action of March 23, 2004

REMARKS/ARGUMENTS

This is in response to the Office Action mailed March 23, 2004 for the above-captioned application. Reconsideration and further examination are respectfully requested.

Claims 1-9 are pending in this application.

Applicants enclose a terminal disclaimer to overcome the obviousness-type double patenting rejection.

Claim 1 has been amended to recite that the ionizable lipid is DODAP or DODMA. The Examiner indicated that a claim that specified DODAP or DODMA as the ionizable lipid would be allowable. Accordingly, claims 1-9 should now be allowable.

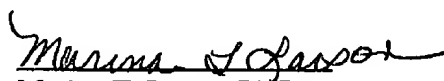
The Examiner has maintained the objection to changes in paragraph at Page 10, line 21-24 as introducing new matter, either by insertion or deletion of information. Applicant has amended this paragraph to eliminate the insertion that was objected to.

The deletion of the reference to DOGS remains, and this matter was discussed with the Examiner in a telephone interview on August 11, 2004. As pointed out during the interview, and in previously filed papers, the inclusion of this single reference to DOGS in the application was in error, and DOGS does not in fact have properties comparable to DODMA and DODAP. It is Applicant's present intention to file a continuation application to pursue claims of broader scope than just DODMA and DODAP, but this will require development of additional information, and consideration as the Examiner has properly done, of whether the deletion of DOGS amounts to new matter as a result of changing the scope of the claims because of a change in the exemplary materials. For purposes of this application, however, whether or not DOGS is references in the application is immaterial to the scope of the claims, and reinstating the reference to DOGS would only have the effect of including in the disclosure information that is understood by the inventors to be in error, and that therefore could potentially mislead a reader. Indeed, it could be stated that the deletion amounts to no more than matching the scope of words of the disclosure to the words

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of the claims. For this reason, Applicants request withdrawal of this aspect of the new matter rejection, with the understanding that this withdrawal is not controlling with respect to this same issue in a continuation application.

Respectfully submitted,


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